



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,152	04/26/2006	Kazuyuki Iida	290230U/SOX PCT	1280
22850 7590 10/28/2010 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER MULCAHY, PETER D				
ART UNIT		PAPER NUMBER		
1762				
NOTIFICATION DATE		DELIVERY MODE		
10/28/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary

Application No.

10/577,152

Applicant(s)

IIDA ET AL.

Examiner

Peter D. Mulcahy

Art Unit

1762

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-26 is/are pending in the application.
- 4a) Of the above claim(s) 4, 5, 8, 9 and 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 10 and 12-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 7, 10, 12-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abe et al. 5,082,888.
3. The rejection set forth under 35 USC 103 in the paper mailed 3/12/10 is deemed proper and is herein repeated. The newly amended claims, declaration and remarks filed in support thereof have been fully considered but have been found not persuasive.
4. The claims have been amended to require "3 to 20%" thermoplastic elastomer. This is not exemplified and the rejection has been changed to a 103 rejection of obviousness. Abe at column 4 lines 10-15 addresses polymeric additives. The ethylene-propylene rubbers mentioned are known impact modifiers. These rubbers are known to render the molded products less brittle and/or withstand higher impact. As such, one is motivated to incorporate the known rubber impact modifiers and obtain a resultant product which is less brittle and/or can withstand higher impact. As such, the incorporation of "3 to 20%" thermoplastic elastomer is prima facie obvious.

Response to Arguments

5. The patent is silent as to any particles being greater than 40 μm . Applicant understands to be an admission that the art is silent as to claimed limitation. The

argument "the Office's rejection of the claims as anticipated in view of the prior art's silence with respect to at least one of the features of the presently claimed invention is legally not supportable" misses the point. This is a negative limitation. The absence of such particles is clearly supported by the lack of any disclosure of the particles being present. As such, the limitation is anticipated.

6. Applicant then alleges that Abe describes a particle size distribution that the based upon larger particles than those claimed. To that point applicant provides a graphical representation of the size distribution alleging to show that the art has more than 10% of the particles larger than 40 μm . This is not persuasive. The graphical representation provided by applicant assumes an angle from the 30%, 30 μm point that is self serving. There is no support for applicant assuming the angle as represented. While the representation alleges ~16% particles being greater than 40 μm , this is irrelevant given the unsupported assumption. A minor adjustment to the angle would result in less than 10% of the particles being greater than 40 μm . More to the point, Abe is clear as to the intent to minimize the percentage of particles greater than 30 μm . Abe exemplifies Talc E having 5% particles being ≥ 30 , see Table I. This is seen to sufficiently suggest the particle size distribution falling within the scope of the claims.

7. It is then alleged that the compositions as claimed have substantially different physical properties than the compositions of Abe. This is not persuasive. The manipulation of izod impact resistance is known. It is prima facie obvious to manipulate the type and relative amount of ingredients so as to arrive at desirable properties. It is

further known that the incorporation or increase in amount of elastomer will increase the izod impact resistance. There is no showing that the izod impact resistance is an unexpected result dependent upon the particle size distribution of the talc as alleged.

8. The declaration and the claim language "consisting essentially of" have been fully considered but fail to render claim 14 patentably distinct from the art. The showing does not support the alleged exclusion of mica. Specifically, the showing uses 5% talc, 20% mica and alleges a failed expansion property. These relative amounts are not representative of the closest art and they do not support the breadth of the claim. It is unclear how 4X the amount of mica relative to the talc represents the art or supports the exclusion of the mica. It is further obvious to leave out a known ingredient and lose its known function.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter D. Mulcahy whose telephone number is 571-272-1107. The examiner can normally be reached on Mon.-Fri. 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on 571-272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter D. Mulcahy/
Primary Examiner, Art Unit 1762